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November 25, 2002

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

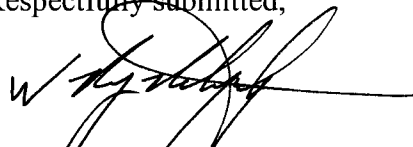
Re: *In the Matter of Telecommunications Relay Services and the Americans With Disabilities Act of 1990*; CC Docket No. 90-571; Petition for Reconsideration of Telecommunications for the Deaf, Inc., The Consumer Action Network, The National Association of the Deaf, and Self Help for Hard of Hearing People

Dear Ms. Dortch:

Enclosed please find the above-referenced Petition for Reconsideration of Telecommunications for the Deaf, Inc., The Consumer Action Network, The National Association of the Deaf, and Self Help for Hard of Hearing People in the above-captioned proceeding.

Should you have any questions concerning this filing, please do not hesitate to contact W. Ray Rutngamlug at (202) 295-8363.

Respectfully submitted,



Andrew D. Lipman
Paul O. Gagnier
W. Ray Rutngamlug

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay)	
Services and the Americans)	CC Docket No. 90-571
With Disabilities Act of 1990)	
)	
)	

**PETITION FOR RECONSIDERATION OF
TELECOMMUNICATIONS FOR THE DEAF, INC.,
THE CONSUMER ACTION NETWORK,
THE NATIONAL ASSOCIATION OF THE DEAF, AND
SELF HELP FOR HARD OF HEARING PEOPLE**

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November 25, 2002

SUMMARY

The last decade has provided somewhat of a dilemma for the Commission. Under the requirements of the Americans with Disabilities Act, as codified in Section 225 of the Communications Act, and its own rules implementing these requirements, the Commission is required to provide, among other things, a TRS service functionally equivalent to coin sent-paid calls via payphones. In addition, Section 225 of the Act required the Commission to implement regulations to ensure that TRS users did not pay more for their services than the rates paid for functionally equivalent voice services. The problem is that technical issues preclude a TRS user from making coin sent-paid calls. In response, at the behest of carriers, and with the agreement of TRS consumers, the Commission implemented an Alternative Plan that sought to provide a suitable surrogate for coin sent-paid calls.

An essential component of the Alternative Plan was that TRS consumers would not have to pay more for a toll TRS payphone call under a calling card or prepaid card call payment method than a non-TRS user would have to pay under a coin sent-paid payment method. In addition, through educational outreach, TRS consumers would be informed of alternative payment mechanisms for TRS calls via payphones. In essence the Alternative Plan was designed such that the TRS consumer would be getting a “functional equivalent” to coin sent-paid calls at a comparable cost.

In its *Fifth Report and Order*, the Commission essentially abandons two essential components of the Alternative Plan, and this action leaves TRS consumers without a “functional equivalent” payphone service. The elimination of the requirement of cost parity for TRS toll payphone calls denies a TRS consumer a functionally equivalent service. A non-TRS user placing a call via a payphone would have a choice of either a coin sent-paid payment method or

calling card/collect call/third-party billing/prepaid calling card methods. A TRS user would not have the choice of coin sent-paid calling due to technical impediments. For the TRS user to have a functionally equivalent service to the non-TRS user, the user must be assured that he/she will not have to pay more for the call via a calling card, or alternative payment method, than via coin sent-paid calling.

There was unanimity in regard to this position for years, including carriers who proposed the toll cost parity in the first place. Now the Commission has suddenly abandoned this requirement due to implementation issues. Carriers that are part of the industry team state that they have complied with this requirement by keeping card rates below the coin rate. Petitioners simply ask for a continuation of this status quo. The Commission's ruling provides carriers an opportunity to abandon cost parity for toll TRS payphone calls and creates the possibility of increased surcharges for toll TRS payphone calls. What is worse is the fact that since cost parity for toll calls is no longer a requirement, TRS users will have difficulty challenging excessive surcharges in a complaint proceeding. Since carriers were claiming they were successful in implementing cost parity for toll TRS payphone calls, there was no reason for the Commission to abandon the requirement. Any carrier claiming implementation issues could have petitioned for a limited waiver of the rule. However, the Petitioners can see no reason to abandon the requirement in its entirety.

The second essential component of the Alternative Plan was educational outreach. For alternative payment methods to provide a functional equivalent to coin sent-paid calls, TRS users had to be aware of the alternative payment methods. Despite claims by carriers that they were providing effective outreach, TRS consumers demonstrated in the proceeding that the vast majority of potential users were unaware of their alternatives. The Commission's response is to

place even more faith in voluntary outreach efforts; an approach that has clearly not been effective. Once again, there is relative unanimity on this issue. Both carriers and TRS consumers agree that outreach is vital, and both agree that outreach efforts would be best conducted under the auspices of a national body, such as the Interstate TRS Fund. The Commission has instead chosen as the conduit of outreach carriers that are clearly disinterested in, and in many cases ill-suited to conduct, a national outreach program. Until the Commission implements a national outreach program, however, the Commission should require that carriers meet the outreach efforts the Commission had previously mandated.

The Alternative Plan was something that the Commission saw to be so important that it did not leave it to the voluntary implementation efforts of carriers, but instead gave it the force of law, by making it part of the Commission's regulations. The Commission now essentially abandons two essential components of the Plan without any showing that the problems these components were designed to address are no longer at issue. The Commission turns it back on a Plan that was the product of seven years of negotiation and compromise and essentially retreats to the situation that TRS users faced in 1995.

If the Commission is going to employ a surrogate for functional equivalence, it must ensure that the alternative provides a truly equivalent service. By removing the requirements of toll cost parity and by limiting outreach to voluntary carrier efforts, the Commission fails to provide a functionally equivalent service as mandated by the Act and its own rules.

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TELECOMMUNICATIONS FOR THE DEAF, INC.,
THE CONSUMER ACTION NETWORK,
THE NATIONAL ASSOCIATION OF THE DEAF, AND
SELF HELP FOR HARD OF HEARING PEOPLE**

Telecommunications for the Deaf, Inc. (“TDI”), The Consumer Action Network (“CAN”), The National Association for the Deaf (“NAD”), and Self Help for Hard of Hearing People (“SHHH”) (collectively “Petitioners”) submit pursuant to Commission Rule 1.429 this Petition for Reconsideration of the Commission’s *Fifth Report and Order*.¹ TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind. TDI’s mission is to promote equal access to broadband, media and telecommunications for the aforementioned constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy.

¹ *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Fifth Report and Order, FCC 02-269 (“*Fifth Report and Order*”).

Established in 1880, NAD is the nation's oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of deaf and hard of hearing individuals in the United States of America. Policy and legislative issues addressed by the NAD cover a broad range of areas, including education, employment, health care, human services, rehabilitation, telecommunications, and transportation.

Established in 1993, CAN serves as the national coalition of organizations representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. CAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

SHHH is a nonprofit, consumer, educational organization, founded in 1979, and devoted to the welfare and interests of those who cannot hear well, their relatives and friends. SHHH, based in Bethesda, Maryland, has 13 state organizations and 250 chapters nationwide. It is the largest consumer organization in the United States representing people with hearing loss. As the voice for hard of hearing people, SHHH strives to improve the quality of life for hard of hearing people through education, advocacy, and self-help. SHHH influences national policy to improve the rights, services, research and public awareness of the rights and needs of people with hearing loss.

The Petitioners request the Commission reconsider its recently issued *Fifth Report and Order*. Specifically, Petitioners request that the Commission restore the requirement that carriers charge the lower of the coin sent-paid rate or the rate for calling card and/or prepaid calling card payment methods for TRS payphone toll calls. Petitioners also request that the Commission implement a national outreach program directed through the TRS Fund Administration in regard

to informing TRS consumers about use of payphones for TRS calls. Until such a program is implemented, the Commission should restore mandatory outreach obligations for carriers.

I. **BACKGROUND OF PROCEEDING**

In 1991, the Commission required TRS providers to be able to handle coin sent-paid calls.² Title IV of the Americans with Disabilities Act (“ADA”), which is codified at Section 225 of the Communications Act of 1934, as amended (“the Act”), mandates that interstate and intrastate telecommunications relay services (“TRS”) are available, to the extent possible and in the most efficient manner, to individuals in the United States with hearing and speech difficulties.³ As the Commission has noted:

Title IV aims to further the Act’s goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are functionally equivalent to those available to individuals without such difficulties. Since the establishment of this mandate, the Commission has taken numerous steps to increase the availability of TRS, and to ensure that TRS users have access to the same services available to all telephone service users.⁴

To achieve functional equivalence to telephone services available to voice users, Congress, among other things, directed the Commission to prohibit TRS providers from “failing to fulfill the obligations of common carriers by refusing calls.”⁵

In addition, Section 225 of the Act required the Commission to implement regulations to ensure that TRS users did not pay more for their services than the rates paid for functionally equivalent voice services.⁶ Those regulations require, in particular, that:

² *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd. 4657 (“*First Report and Order*”).

³ 47 U.S.C. § 225, *et seq.*

⁴ *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Fifth Report and Order, FCC 02-269, ¶ 1 (“*Fifth Report and Order*”).

⁵ *Fifth Report and Order*, ¶ 2.

⁶ 47 U.S.C. § 225(d)(1)(D).

TRS shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of termination.⁷

Section 225 of the Act and its corresponding regulation thus represent a Congressional mandate to ensure cost parity for TRS users.

The Commission interpreted the ADA mandate to require TRS providers to handle “any type of call normally provided by common carriers.”⁸ The burden of proving the infeasibility of handling a particular type of call was placed on the carriers.⁹ The Commission interpreted “any type of call” to include coin sent-paid calls that are calls made by depositing coins in a coin-operated public payphone.¹⁰ TRS providers were required to handle coin sent-paid calls by July 26, 1993.¹¹

Prior to the deadline, carriers filed petitions for reconsideration arguing that TRS is incompatible with coin sent-paid technology. The Commission rejected the petitions finding that the carriers had failed to meet their burden of proving the infeasibility of providing a service readily available to voice telephone users.¹² As the deadline approached, carriers again petitioned the Commission to exclude coin sent-paid calls from the mandatory minimum TRS requirements. At the time, the carriers suggested that new technologies would be available to solve the technical impediments within two years. As a result, the Common Carrier Bureau suspended the coin sent-paid rule for an additional two years.¹³

In 1995, as the second deadline approached, the Industry Team that was formed to address technical impediments to coin sent-paid TRS calls determined that the technological

⁷ 47 C.F.R. § 64.604(c)(4).

⁸ *Fifth Report and Order*, ¶ 2., citing, *First Report and Order*, 6 FCC Rcd. at 4661, n. 18.

⁹ *Fifth Report and Order*, ¶ 2.

¹⁰ *Fifth Report and Order*, ¶ 2.

¹¹ *Fifth Report and Order*, ¶ 2., citing, *First Report and Order*, 6 FCC Rcd. at 4657.

¹² *Fifth Report and Order*, ¶ 3.

solution it designed, Coin Signaling Interface (“CSI”), had serious drawbacks rendering it technically infeasible.¹⁴ The Industry Team proposed an Alternative Plan to enable individuals to make relay calls from payphones using payment methods other than coins. The Alternative Plan proposed to require carriers to: (1) allow TRS users to make local TRS payphone calls free of charge; (2) enable TRS users to make toll calls using calling or prepaid (debit) cards with rates equivalent to or less than those that would apply to a similar conventional call made using coin sent-paid service (coin call rates); and (3) develop programs to educate TRS users about alternative payment methods and to make calling or prepaid cards available to TRS users.¹⁵

Based on the representations of the Industry Team, the Common Carrier Bureau suspended the coin sent-paid requirement for another two years and adopted the Alternative Plan for two years. In a report filed eighteen months later, the Industry Team suggested that the Alternative Plan be made permanent since they were no closer to technical solution.¹⁶ Representatives of the TRS community commenting on the Industry Team reports noted that the consumer education aspect of the Alternative Plan had not been effective in informing TRS users about how they can use payphones.¹⁷ In 1997, the Commission directed carriers to continue the Alternative Plan and also implement additional consumer education efforts to address prior shortcomings in outreach efforts.¹⁸

In 1999, in response to another Industry Team report, TRS consumers noted that, among other things, an educational letter had not been printed in various organizational newsletters, that coin sent-paid exhibits at conferences did not include prominent displays or hands-on

¹³ Fifth Report and Order, ¶ 4.

¹⁴ Fifth Report and Order, ¶ 6.

¹⁵ Fifth Report and Order, ¶ 6.

¹⁶ Fifth Report and Order, ¶ 9.

¹⁷ Fifth Report and Order, ¶ 10.

¹⁸ Fifth Report and Order, ¶ 12.

opportunities for consumers, wallet-sized cards were inconspicuously displayed, and that program books of various events did not list information or workshops about the Alternative Plan.¹⁹ The Commission continued to suspend the coin sent-paid requirement. This suspension was extended seven times, and in 2001 was suspended pending the adoption of final rules in this proceeding.²⁰ The Alternative Plan in essence had become the TRS consumers' *quid pro quo* for the carriers' inability to find a technical solution.

The Alternative Plan has been in effect since 1995 and has been the product of much negotiation and compromise between TRS consumers and carriers. The Industry Team itself notes that during the period of time the Alternative Plan has been in effect, it has been subject to "regular improvements in consumer outreach methods."²¹ In fact, the initial parameters of the Alternative Plan were set by the Industry Team itself.²² These outreach efforts became much more than voluntary endeavors on the part of carriers. The FCC mandated these outreach efforts, and at that point, the Alternative Plan took the force of law.

The Commission has now decided to remove the coin sent-paid requirement in its entirety. The Commission has stated that:

Because no current technological solution to the coin sent-paid issue appears feasible, this Order eliminates the coin sent-paid requirement and encourages specific outreach and education programs to inform the TRS users of their options when placing calls from payphones. Because we conclude that it is infeasible to provide coin sent-paid relay service through payphone at this time, and the coin sent-paid functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid TRS calls from payphones.²³

The Commission concluded, "we expect that the elimination of the coin sent-paid requirement will have minimal impact on TRS because alternative methods by which TRS users may place

¹⁹ *Fifth Report and Order*, ¶ 13.

²⁰ *Fifth Report and Order*, ¶ 2, n. 5.

²¹ Industry Team Comments at 2.

²² *Fifth Report and Order*, ¶ 2.

calls from payphones provide functionally equivalent means for placing coin sent-paid TRS calls from payphones.”²⁴ In essence, the Commission has placed faith in the availability of alternative payment mechanisms for payphones coupled with outreach efforts to provide users of TRS via payphones a functional equivalent to coin sent-paid calls.

The Commission, however, has taken actions in the *Fifth Report and Order* that undermine the goal of functional equivalence as opposed to promoting it. The Commission has eliminated one crucial element of the Alternative Plan, the requirement of cost parity for toll TRS calls via payphones, and made another component of the plan, educational outreach, essentially a voluntary program. These actions preclude the goal of functional equivalence being achieved in regard to payphone calls.

II. ELIMINATION OF COST PARITY FOR COIN SENT-PAID TOLL CALLS WILL NOT PROMOTE THE ADA’S REQUIREMENT OF FUNCTIONAL EQUIVALENCY

- A. The Requirement of Functional Equivalency Requires that TRS Users Be Able to Make Calls At a Cost Equivalent, and in a Manner Similarly Convenient, to Calls Made by their Non-TRS Using Counterparts.

As previously noted, the Commission was required by the Act to implement regulations to ensure that TRS users did not pay rates greater than those paid for functionally equivalent voice services. By no longer requiring carriers to charge the lower of the coin sent-paid rate or the rate for calling card and/or prepaid calling card payment methods for TRS payphone toll calls,²⁵ the Commission is violating its mandate for TRS cost parity under the Act and its own rules to ensure TRS cost parity. In addition, the Commission has retreated from one of the essential components of the Alternative Plan. The Commission stated that the record in this

²³ *Fifth Report and Order*, ¶ 2.

²⁴ *Fifth Report and Order*, ¶ 17.

²⁵ *Fifth Report and Order*, ¶ 23.

proceeding does not demonstrate that it is feasible to compare the coin-sent rate for a long distance call from a specific payphone and the rate of these alternative billing mechanisms.²⁶ The Commission instead decided to “strongly encourage” carriers to “eliminate other surcharges on TRS calls, and to assist callers, through educational outreach, in finding the most cost effective means of making TRS toll calls from payphones.”²⁷

TDI, CAN, NAD, and SHHH assert that functional equivalency, as mandated by the ADA, requires TRS providers to allow consumers to make and receive TRS calls with the same benefits that are available to non-TRS users, including selection of a preferred service provider and choice of payment options. Furthermore, TRS consumers should not be burdened by lengthy delays, extra costs, or inferior services simply because they are deaf, hard of hearing, late-deafened, or deaf-blind. If deaf, hard of hearing, late-deafened, and deaf-blind individuals are to participate in and benefit fully from modern telecommunications, the Commission must ensure that the statutory requirements for functional equivalency are met.

Non-TRS users wishing to make toll calls using a payphone have a number of options to pay for such calls, including the coin sent-paid method or use of calling cards, prepaid cards, and collect or third party billing. To have functionally equivalent access to payphone toll services, TRS consumers ideally would have an identical range of payment options when making payphone toll calls. The Commission, in its *First Report and Order* on TRS, found that carriers must provide coin sent-paid TRS service in order to provide functionally equivalent toll payphone service to TRS consumers.²⁸

²⁶ *Fifth Report and Order*, ¶ 24.

²⁷ *Fifth Report and Order*, ¶ 25.

²⁸ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, CC Docket No. 90-571, 6 FCC Rcd 4657 (1991) (“*First Report and Order*”), at 4657.

However, the telephone industry has encountered difficulty in developing a technical solution to the problem of processing TRS toll coin sent-paid calls. As noted above, in its *Fifth Report and Order* on TRS, the Commission concluded that there is no current feasible way to provide TRS toll calls using coins and withdrew its requirement that TRS carriers and providers be capable of providing coin sent-paid TRS payphone calls.²⁹ As a result, TRS consumers will not have the option of using the coin sent-paid method to pay for payphone toll calls.

Not only will TRS consumers not have the option of using coins to pay for payphone toll calls, the alternative payment methods available to them may result in TRS consumers actually paying higher rates. Reinforcing this concern is the fact that the Commission in its *Fifth Report and Order* also declined to require TRS providers to charge the lower of the coin sent-paid rate or the rate for calling card and/or prepaid calling card payment methods for TRS payphone toll calls.³⁰

If alternative payment mechanisms result in higher rates for TRS users, the ADA's mandate of functional equivalence will not be met. Not only will TRS consumers be unable to use coins to pay for payphone toll calls, they could also be forced as a result to pay higher rates to make such calls. The ADA's mandate of functional equivalence could not have envisioned that TRS users would be at such a choice and cost disadvantage to non-TRS users.

B. Implementation Issues Should Not Preclude the Requirement of Cost Parity

As noted above, an Industry Team was created to resolve technical problems associated with implementing TRS coin sent-paid functionality. The Industry Team proposed an Alternative Plan to allow TRS consumers to pay for payphone toll calls using alternate methods

²⁹ *Fifth Report and Order*, ¶ 17.

³⁰ *Fifth Report and Order*, ¶ 24-25.

at rates equal to or less than the rates that would apply using the coin sent-paid method.³¹ The carriers, looking to stave off the Commission's coin sent-paid TRS toll requirement, would not have proposed to maintain such alternative method rates if they felt they could not implement them.

In addition, the Industry Team carriers, arguing against a proposed Commission requirement that carriers charge prepaid and calling card rates that are lower than coin sent-paid rates for TRS toll calls, have maintained that they have complied with the Alternative Plan by keeping their card rates below their coin sent-paid rates.³² If this is the case, it is unclear why all carriers should not be able to maintain lower card rates in such a manner.

Carriers should be able to implement a method for ensuring that rates arising from alternative payment methods remain lower than coin rates for TRS toll calls. Although the Commission noted in its *Fifth Report and Order* that for carriers to make a comparison between coin sent-paid and alternative billing rates from specific payphones would not be feasible, the Industry Team's experience suggests that in the majority of cases carriers can ensure that the calling card rate is lower than the coin sent-paid rate. In the remaining cases, TRS users should be able to challenge excessive surcharges by demonstrating that the calling card rate is higher than the corresponding coin sent-paid rate. The Commission should also consider exploring other possibilities, such as requiring TRS providers to offer special calling cards for TRS users with rates lower than those for coin sent-paid toll calls. In addition, the Commission recognized comments filed by TDI, CAN, and NAD that suggested that industry innovation and creativity

³¹ *Fifth Report and Order*, ¶ 6.

³² *Fifth Report and Order*, ¶ 26, citing Comments filed by the Coin Sent-Paid Industry Team in *In the Matter of Telecommunications Relay Service and the Americans with Disabilities Act of 1990*, Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 5803, at 5803 (2001) ("Coin Sent-Paid Further Notice").

could result in new payment methods such as smart cards for TRS consumers.³³ The possibility of such innovation coupled with the Industry Team's representations that they were already keeping their rates below the coin sent-paid rate should be sufficient for the Commission to maintain the cost-parity requirement.

The Alternative Plan proposed by the Industry Team was largely responsible for the Commission's suspension of the requirement that TRS providers provide coin sent-paid functionality for TRS toll calls. With the elimination of that requirement as well as the cost parity requirement, the Commission's *Fifth Order and Report* has undercut the goal of functional equivalence for TRS users wishing to make payphone toll calls.

III. THE COMMISSION RELIES TOO MUCH ON VOLUNTARY CARRIER EFFORTS IN REGARD TO OUTREACH

Educational outreach clearly has been, and remains, a significant component of the Commission's goal of creating functional equivalence. As the history of this proceeding recited above demonstrated, the outreach efforts promised by carriers and directed by the Commission as part of the Alternative Plan provided much of the impetus for the Commission to suspend initially the coin sent-paid requirement and to continue suspending the requirement. However, as discussed below, the required outreach programs have been consistently administered by carriers in a half-hearted and ineffective manner throughout the suspension period, despite their clear obligations under the Alternative Plan. By now making these obligations voluntary, rather than mandatory as they have been since 1995, the Commission is essentially abdicating its responsibilities and legal obligations to provide TRS users with a functionally equivalent service.

³³ *Fifth Report and Order*, ¶ 27, citing comments filed by TDI, CAN, and NAD in *Coin Sent-Paid Second Further Notice*, at 8.

In its 1995 Memorandum Opinion and Order, the Common Carrier Bureau directed carriers to make payphones accessible to TRS users pursuant to the Alternative Plan, including the mandatory requirement for carriers to provide “programs to educate TRS users about these alternative payment methods. . .”³⁴ Two years later, the Bureau continued to suspend the coin-sent paid requirement in its *1997 Suspension Order*.³⁵ The *1997 Suspension Order* noted that there had been several serious problems with the carriers’ required outreach efforts and “direct[ed] carriers to improve their efforts to educate TRS users about how they can reach relay service centers from payphones” using calling cards or prepaid cards.³⁶ The Bureau then went on to “direct the industry to implement” consumer education proposals specified by the Bureau in the *1997 Suspension Order*.³⁷ The Alternative Plan, as modified by the 1997 Suspension Order with respect to outreach programs, was subsequently reaffirmed by the Common Carrier Bureau on an annual basis through 2001.³⁸

Carriers have therefore been required to provide educational outreach programs for TRS users since 1995. Yet, as the Commission itself noted in the *Fifth Report and Order*, “implementation of the current educational and outreach programs have not been sufficient.”³⁹ The Commission has now decided to eliminate the coin sent-paid requirement entirely and the requirement of toll cost parity for TRS payphone calls based, in large part, in the confidence it places in educational outreach efforts.⁴⁰ Instead of continuing to make educational outreach

³⁴ *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Memorandum Opinion and Order, 10 FCC Rcd 10927 (“*Alternative Plan Order*”), ¶ 30.

³⁵ *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order, 12 FCC Rcd 12196 (“*1997 Suspension Order*”).

³⁶ *1997 Suspension Order*, ¶ 17.

³⁷ *1997 Suspension Order*, ¶¶ 18 - 19.

³⁸ See, e.g., *Orders extending the 1997 Suspension Order* at 13 FCC Rcd 15453 (1998), 15 FCC Rcd 6675 (1999), 15 FCC Rcd 15823 (2000).

³⁹ *Fifth Report and Order*, ¶ 28.

⁴⁰ *Fifth Report and Order*, ¶ 25. (“Although we decline to require carriers to charge the lower of the coin sent-paid rate or other available rates, we strongly encourage carriers to eliminate other surcharges on TRS calls, and to

mandatory, however, the Commission has now decided to rely upon the voluntary efforts of carriers.

In the *Fifth Report and Order*, the Commission noted the tremendous value of outreach programs in the context of communicating awareness regarding completing TRS calls from payphones. The Commission stated that “we continue to believe that extensive outreach programs are necessary and appropriate to expand consumer awareness about making TRS calls from payphones.”⁴¹ The Commission observed that over the past few years, TRS consumers and industry members have reached consensus on the types of outreach and education that can be effective for this purpose, and that several measures have already been implemented by carriers. However, as discussed above, the Commission noted that “implementation of the current educational and outreach programs have not been sufficient.”⁴² The Commission encouraged carriers to continue to develop programs to educate users about making calls via payphones and stated that such outreach “is an essential element of the continued success of the TRS programs.”⁴³ The Commission did not mandate outreach programs but instead noted that if it found that “consumers are not receiving adequate outreach and education about TRS payphone calls,” it would “consider whether some or all of the recommended measures should become mandatory requirements.”⁴⁴

This is a risky enough proposition to begin with, but given the past history of outreach efforts with regard to TRS for payphones, the Commission’s reliance on carriers’ voluntary efforts is even more problematic. The Commission itself has noted that prior outreach efforts

assist callers, through educational outreach, in finding the most effective means of making TRS toll calls from payphones.”)

⁴¹ *Fifth Report and Order*, ¶ 28.

⁴² *Fifth Report and Order*, ¶ 28.

⁴³ *Fifth Report and Order*, ¶ 28.

⁴⁴ *Fifth Report and Order*, ¶ 28.

have not been significant, and on more than one occasion TRS consumer groups have demonstrated the inadequacy of current outreach efforts.

As the Deaf Seniors of America observed:

During the two-year extension of the suspension, CAN frequently provided lists of dates and respective contacts of various local, regional and national consumer-oriented events for use by the Carriers to achieve these action items. Contact names for national organization events, publications, and advertising were provided. The Carriers continuously stated that they were not ready to carry out the alternative plan to notify consumers as stated above. Yet, in its 18-Month Report to the FCC, submitted March 12, 1997, the Carriers claimed that their alternative plan was progressing satisfactorily and requested that the plan be permanently adopted. On June 2, 1997, consumers, in a document to the FCC, disagreed with the Carriers' progress and opposed the permanent adoption of the Alternative Plan. The consumers concluded that that the Carriers didn't perform their part effectively to meet the objectives of the Alternative Plan.⁴⁵

Despite this, the Common Carrier Bureau extended the suspension for an additional year and directed carriers to improve their outreach efforts by implementing specific activities.⁴⁶ Despite the exhortation to step up their outreach efforts, the carriers attempted to process the Order internally and with a minimal budget if any.⁴⁷ On May 5, 1998, the carriers met with CAN representatives to discuss the consumer education letter and wallet-size cards. The consumers expressed concerns about minimal information being shared with the limited public. The carriers assured the consumer representatives that they would be promoting the program aggressively, including having demonstrations in various events during summer 1998 and posting the plan on web sites.

As DSA observed:

Since then, reports have been received from consumers and organizations that such an educational letter was not printed in various organizational newsletters and that wallet-sized cards, if any, were left in inconspicuous areas with TRS providers' unrelated exhibit booths. Such exhibits did not include prominent

⁴⁵ CC Docket No. 90-571, Comments of Deaf Seniors of America at 3 (May 7, 2001).

⁴⁶ *1997 Suspension Order*, ¶¶ 17 - 19.

⁴⁷ Deaf Seniors of America Comments at 3.

displays or hands-on opportunities to become acquainted with the services being provided. Program books of various events did not list any information or workshops about the plan.⁴⁸

To evaluate the effectiveness of the carriers' outreach efforts, CAN conducted a survey in 1998 to measure the awareness of consumers using TRS. The survey was conducted at six conferences. Those surveyed represented approximately the top 10% to 25% of the national deaf and hard of hearing population economically and academically. The results from the survey "indicated that at least 85% of the respondents were still unaware of information supposedly provided by the carriers."⁴⁹

As the Deaf Seniors of America noted:

Since 1997, the FCC has annually issued orders suspending the TRS CSP requirements in order to allow carriers time to implement FCC mandated regulations. However, the carriers continue to minimally comply with the regulations, and continue to claim they need additional time for compliance, to the detriment of service to the population for which the regulations were originally issued.⁵⁰

These ongoing problems with the carrier outreach efforts required by the Alternative Plan are well-established in the record of this proceeding and acknowledged by the Commission.⁵¹ Therefore, the Commission's decision to make these obligations voluntary is inexplicable in light of the ongoing failure of carriers to adequately meet these obligations when they were mandatory.

The *Fifth Report and Order* is populated with various exhortations for carriers to employ voluntary educational outreach efforts in regard to TRS calls via payphones. However, several of these recommended measures were in fact mandatory pursuant to the *1997 Suspension Order*,

⁴⁸ Deaf Seniors of America Comments at 4.

⁴⁹ Deaf Seniors of America Comments at 4.

⁵⁰ Deaf Seniors of America Comments at 5.

⁵¹ See, e.g., *Fifth Report and Order*, ¶¶ 10 and 13.

and their implementation can thus far best be described as “spotty.” The following is a summary of the voluntary measures recommended by the Commission.

Consumer Education Letter The Commission “strongly recommends” that carriers provide a consumer education letter providing instruction on how to make TRS calls from payphones and the various options available for payment of these calls.⁵² The Commission also “encourages” carriers to consult with consumers on the most effective means of disseminating the information.⁵³ A consumer education letter was actually *required* pursuant to the *1997 Suspension Order*,⁵⁴ however such a letter was never printed in various organizational newsletters for the hearing-impaired community.⁵⁵

Informational Booths at Conferences The Commission “strongly recommends” that carriers attend and set up informational booths at local, regional and national consumer conferences.⁵⁶ The Commission deemed such informational booths will provide “an effective and efficient means for consumer education” because consumers “will be able to obtain information from carriers, while at the same time expressing their concerns.”⁵⁷ This measure was also required by the *1997 Suspension Order*,⁵⁸ yet has only marginally been complied with by carriers.⁵⁹

TRS Instructions On or Near TTY Payphones As far as posting information on how to make TRS calls near payphones, the Commission has decided to “encourage carriers to work

⁵² Fifth Report and Order, ¶ 28.

⁵³ Fifth Report and Order, ¶ 30.

⁵⁴ 1997 Suspension Order, ¶ 18.

⁵⁵ Deaf Seniors of America Comments at 4.

⁵⁶ Fifth Report and Order, ¶ 31.

⁵⁷ Fifth Report and Order, ¶ 31.

⁵⁸ 1997 Suspension Order, ¶ 18.

⁵⁹ See, e.g., Deaf Seniors of America Comments at 4.

with PSPs to voluntarily make such information available at payphone sites wherever possible.”⁶⁰

TRS Web Site The Commission also decided to “strongly recommend” that carriers create web sites for individuals to obtain information about making relay calls from payphones. The Commission notes that such web sites could “illustrate how to make relay calls from payphones, provide information on the cost of such calls, display the consumer education letter and/or provide a video on making a relay call from a payphone.”⁶¹

TRS Information in Telephone Directories The Commission “encourages” carriers to place step-by-step instructions in telephone directories that describe how to make relay calls from payphones. The information to be provided should include instructions for making local and toll TRS calls from payphones, numbers to call for assistance and information about relay services, the charges associated with making non-local TRS calls, and billing options available. The Commission noted that “providing this information in telephone directories will ensure that TRS users have an easily accessible source of information for some of their basic questions, no matter where they are calling from.”⁶² By making this a voluntary measure, the Commission completely disregards its own rules, which currently require that carriers “through publication in their directories . . . shall assure that callers in their service area are aware of the availability and use of *all forms* of TRS.”⁶³

Consultation With the Disability Community The Commission determined that consultation with consumer groups could “be beneficial to consumer outreach and education efforts” and therefore “strongly recommended” that carriers regularly consult with

⁶⁰ Fifth Report and Order, ¶ 33.

⁶¹ Fifth Report and Order, ¶ 34.

⁶² Fifth Report and Order, ¶ 37.

⁶³ 47 C.F.R. § 64.604(c)(3) (emphasis added).

representatives of people with hearing and speech disabilities to determine the effectiveness of each of these consumer education programs.⁶⁴ This measure was also required by the *1997 Suspension Order*,⁶⁵ but, as noted below, even before the Commission issued the *Fifth Report and Order* carriers were noting their disinclination to continue the meetings. Finally, the Commission encouraged carriers to utilize measures proposed by TDI/CAN/NAD including setting up demonstrations at shopping malls, public transit facilities, and sports arenas.⁶⁶

Carrier outreach efforts under the Alternative Plan have been problematic, and there is no indication that things are going to improve. The Industry Team has stated:

The joint outreach activities of the Industry Team were voluntary, temporary efforts, undertaken while the Commission's coin sent-paid requirements were temporarily suspended. Now that the Commission is about to modify its coin sent-paid requirements, it no longer makes sense for carriers to officially pool costs associated with TRS outreach. Carriers are in the business of competing with each other and do not have mechanisms for sharing the costs of consumer education programs. Nor should they since such cooperative efforts may place carriers at risk of violating antitrust laws. The proper entity to provide outreach materials, free of association with specific carriers or relay bodies, is a neutral governmental body, or an agent of the government, such as the Administrator of the Interstate TRS Fund.⁶⁷

The Industry Team also stated that it “does not see the need for special meetings confined to carriers and consumer groups to evaluate the effectiveness of the other proposed outreach measures since the new measures should be undertaken by a governmental entity.”⁶⁸ Thus, despite the Commission's “strong recommendations” and encouragement it appears clear that voluntary carrier efforts will not provide the path to effective outreach. If carriers did not provide effective outreach when they were mandated to do so, they most certainly will not when it is a “voluntary” obligation.

⁶⁴ *Fifth Report and Order*, ¶ 38..

⁶⁵ *1997 Suspension Order*, ¶ 18.

⁶⁶ *Fifth Report and Order*, ¶ 39.

⁶⁷ Industry Team Comments at 15.

It is also clear that leaving outreach to the voluntary efforts of carriers will continue to diminish the prospects of effective outreach. Leaving the implementation of an outreach program to individual carriers will not create the national outreach program that is needed to promote TRS awareness. First, there is no guarantee that all carriers will place the same emphasis on outreach. Given the present financial circumstances, many carriers may place outreach lower on its list of priorities. Second, implementation of outreach on carrier-by-carrier basis will provide less uniformity. Areas served by certain carriers may have meaningful outreach while other areas do not. All areas of the country need to be able to reap the benefits of increased outreach and training. In addition, there are multiple providers of TRS services throughout the country, thus further increasing the need for uniformity. The California Public Utilities Commission, which has multiple TRS providers within its jurisdiction, stated in response to the *Coin-Sent Paid Further Notice*⁶⁹ that “information on how to access TRS over payphones should include how to access *any* of the TRS providers.”⁷⁰

Third, it is hard to monitor outreach success on a carrier-by-carrier basis. It may be hard to discern carrier efforts in this regard without some type of reporting requirement that will increase the workload and expense for all concerned. It is a lot easier to monitor the extent and success of outreach when it is monitored and directed through a national organization. While the Commission has required carriers to file a report after one year, this is a one-time event. In addition, as shown above, carrier self-reporting often does not provide accurate insight into outreach efforts. A national outreach effort spearheaded by the TRS Fund Administration would be able to monitor the success and failures of outreach efforts more accurately.

⁶⁸ Industry Team Comments at 19.

⁶⁹ 16 FCC Rcd 5803 (2001).

⁷⁰ CC Docket No. 90-571, Comments of the Public Utilities Commission of the State of California at 5 (May 7, 2001) (emphasis added).

One Commissioner, in a statement attached to the *Fifth Report and Order*, has criticized the Commission for failing to require educational efforts or outreach to ensure that consumers are aware of their options despite finding that current educational and outreach programs have not been sufficient.⁷¹ The Commission has repeatedly espoused the many tangible benefits that increased outreach and training can provide, but has failed to put the mechanism in place to make these benefits a reality. In fact, the Commission takes a step back in that it used to mandate that carriers partake in certain outreach efforts, but now it makes the outreach efforts voluntary. This is particularly evident in regard to publishing information in telephone directories where Commission rules currently require that carriers “through publication in their directories . . . shall assure that callers in their service area are aware of the availability and use of all forms of TRS.”⁷² Disregarding this language, the Commission, in the *Fifth Report and Order*, simply “encourages” carriers to publish information in directories. The Commission has failed to justify its substantial retreat on outreach, particularly since outreach was such a significant component in the Alternative Plan.

The issue of outreach is an area where there is substantial agreement between carriers and consumers over the importance of such efforts.⁷³ There is also agreement that outreach efforts should not be focused on voluntary carrier efforts.⁷⁴ Petitioners agree with the Industry Team that outreach should be under the purview of a national governmental entity such as the Interstate TRS Fund and Petitioners suggest that outreach efforts be funded via the TRS Fund.⁷⁵ Since there was, and continues to be, unanimity on this proposal the Commission should have

⁷¹ *Coin Sent-Paid Order*, Statement of Commissioner Michael J. Copps, Approving in Part, Dissenting in Part.

⁷² 47 C.F.R. § 64.604(c)(3).

⁷³ See TDI/CAN/NAD Comments at 8-10; Industry Team Comments at 13-14.

⁷⁴ Industry Team Comments at 15.

⁷⁵ Industry Team Comments at 15; Industry Team Reply Comments at 4.

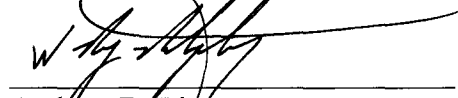
implemented it. Until such time that a national outreach program is implemented, the Commission can ill afford to leave outreach to the voluntary efforts of carriers. The Commission must continue to mandate outreach efforts as required by Title IV and the Commission's implementing regulations.

* * *

IV. CONCLUSION

For the foregoing reasons, Petitioners request that the Commission restore the requirement that carriers charge the lower of the coin sent-paid rate or the rate for calling card and/or prepaid calling card payment methods, for TRS toll calls from payphones. Petitioners also request that the Commission implement a national outreach program directed through the TRS Fund Administration in regard to informing TRS consumers about use of payphones for TRS calls and payment methods. Until such a national outreach program is implemented, the Commission should continue to require carriers to fulfill their outreach obligations.

Respectfully submitted,



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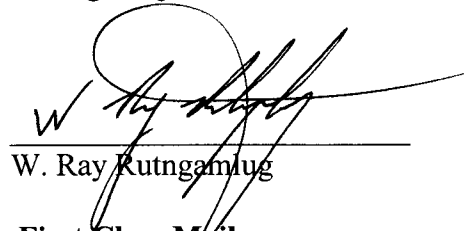
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November 25, 2002

CERTIFICATE OF SERVICE

I, W. Ray Rutngamlug, hereby certify that on November 25, 2002, I caused to be served upon the following individuals the Petition for Reconsideration of Telecommunications for the Deaf, Inc., The Consumer Action Network, The National Association of the Deaf, and Self Help For Hard of Hearing People in CC Docket No. 90-571.



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